bor, 51 L. R. A. 863, and note (20 R. I. 126, 78 Am. St. Rep. 842, 37 Atl. 634), and St. John *v.* Andrews Institute, 191 N. Y. 254, 83 N. E. 981, 14 Ann. Cas. 708. The rule that there is no presumption of survivorship in a common disaster applies where the insured and beneficiary died in a common disaster. 14 R. C. L. p. 1380. In the absence of any presumption as to which died first, the law requires evidence as a foundation for action in the matter. The burden of proof is always upon him who has the affirmative, and if he fails to discharge it with evidence legally sufficient for the purpose, he must suffer defeat. The adversary party succeeds, not upon proof of his own case, but by reason of the absence of evidence on the part of him who has the burden of proof. The authorities are divided upon the question of where the burden of proof lies in cases like this. In some of the cases it is held that the contract in policies like the one in the present case is made conditional on the beneficiary surviving, and that, there being no presumption, in case of death from a common disaster, that the beneficiary has survived the insured, the burden of proof is upon the representatives of the beneficiary, because the conditional benefit becomes absolute only upon proof of actual survivorship. Middeke *v.* Balker, 198 Ill. 590, 59 L. R. A. 653, 92 Am. St. Rep. 284, 64 N. E. 1002, and Males *v.* Sovereign Camp, W. W., 20 Tex. Civ. App. 184, 70 S. W. 108. Other cases hold that the result is the same as though the insured died first, on the theory that the beneficiary did not die in the lifetime of the insured. Cowman *v.* Rogers, 73 Md. 403, 10 L. R. A. 550, 21 Atl. 64; United States Casualty Co. *v.* Kacer, 169 Mo. 301, 58 L. R. A. 436, 92 Am. St. Rep. 641, 69 S. W. 370, and Faul *v.* Hulick, 18 App. D. C 9. We think the latter rule is more in accord with the trend of our decisions."

Elections—Wrongful Deprivation of Right to Vote.—In Wayne *v.* Venable, 260 Fed. 64, the U. S. Circuit Court of Appeals for the Eighth Circuit, held that an action for damages in a proper federal court lies by a qualified voter for his wrongful deprivation of his constitutional right to vote for a member of Congress by a defendant or by an effective conspiracy of several defendants.

The court said in part: "The right of qualified electors to vote for a member of Congress at a general state election, which is also an election at which a Congressman is to be lawfully voted for and elected, is a right 'fundamentally based upon the Constitution [of the United States], which created the office of member of Congress, and declared it should be elective, and pointed to the means of ascertaining who should be electors.' Ex parte Yarbrough, 110 U. S. 655, 664, 665, 4 Sup. Ct. 158, 28 L. Ed. 274. An action for damages in the proper federal court lies by a qualified elector for his wrong-

ful deprivation of this right by a defendant or by an effective conspiracy of several defendants who deprive him thereof. Wiley *v.* Sinkler, 179 U. S. 58, 62, 63, 64, 21 Sup. Ct. 17, 45 L. Ed. 84; Swafford *v.* Templeton, 185 U. S. 487, 491, 492, 22 Sup. Ct. 783, 46 L. Ed. 1005. In the eyes of the law this right is so valuable that damages are presumed from the wrongful deprivation of it without evidence of actual loss of money, property, or any other valuable thing, and the amount of the damages is a question peculiarly appropriate for the determination of the jury, because each member of the jury has personal knowledge of the value of the right. Scott *v.* Donald, 165 U. S. 89, 17 Sup. Ct. 265, 41 L. Ed. 632; Wiley *v.* Sinkler, 179 U. S. 58, 65, 21 Sup. Ct. 17, 45 L. Ed. 84. * * * The suggestion of counsel for the defendants that the federal court has no jurisdiction over these actions because the plaintiffs produced no direct testimony that they wanted or intended to vote at this election for candidate for United States Senator, or for a candidate for Congressman, while they proved that they were deeply interested in the election of a candidate for a justice of the peace, is insignificant and negligible. They pleaded in their complaint that they were deprived of their right to vote for a candidate for United States Senator and for a candidate for Congressman by the conspiracy of these defendants which they alleged and the attainment of its object. They proved to the satisfaction of the jury that they were deprived of their right to vote for any one at this election by the conspiracy and the attainment of its object, and as the whole is greater than any of its parts and includes all of them, they proved that they were deprived of their rights to vote for a candidate for United States Senator and for a candidate for Congressman, and that constitutes proof of a cause of action over which the federal court has jurisdiction."

Sales—Manufacturer's Liability for Negligent Sale of Air Rifle.—In Herman *v.* Markham Air Rifle Co., 258 Fed. 475, the U. S. District Court for the Eastern District of Michigan held that a manufacturer, failing to make proper inspection before selling a loaded air rifle discharged at a retailer's employee by a prospective customer of the retailer buying it from a wholesaler without knowledge of its condition, is liable for the injury, although there is no privity of contract between the person injured and the manufacturer.

The court said: "It is urged by the defendant that, conceding that it was guilty of negligence as alleged, such negligence was not the proximate cause of the injury sustained by plaintiff. It is insisted that the act of the person who handled the air rifle, in causing it to be discharged at the plaintiff, was such an independent and intervening cause as to be the proximate cause of the injury, so